

RAIL INDUSTRIAL ACCESS PROGRAM



APPLICATION GUIDANCE & PROCEDURES

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Introduction

Purpose

Section 33.2-1600 of the *Code of Virginia* gives the purpose for the Industrial Access Railroad Tracks Program. In this statute, the General Assembly declares it to be in the public interest that access railroad tracks and facilities be constructed to certain industrial commercial sites where rail freight service is or may be needed by new or substantially expanded industry and that financial assistance be provided to areas seeking to furnish rail freight trackage between the normal limits of existing or proposed common carrier railroad tracks and facilities and the actual site of existing or proposed commercial buildings or facilities.

State Policy:

According to a resolution passed November 16, 1995, the Commonwealth Transportation Board (CTB) the Industrial Access Railroad Tracks Program is to provide funding to be used as an incentive to encourage industrial or commercial development in the Commonwealth of Virginia. It is not intended to fund projects that will not have a significant economic impact.

Program Contact

Questions related to the Industrial Access Railroad Tracks Program should be directed to the Department of Rail and Public Transportation (DRPT) at the following address, phone and fax numbers.

Jeremy Latimer, Manager of Rail Industrial Access Programs
Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, Virginia 23219

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Program Administration

Administrative Responsibility

The Industrial Access Railroad Track program is administered by the Director of DRPT in accordance with the direction of the CTB. The Director may consult with the Commissioner of Agriculture and Consumer Services, the Director of the Office of Business Assistance, and the Director of the Economic Development Partnership (or their designated representatives) concerning applications for funds in accordance with the Code of Virginia. The DRPT staff will receive and process applications, make recommendations to the CTB, supervise the program, and approve for payment the costs incurred and invoiced by the Grantee.

How to Apply:

Application materials can be downloaded from DRPT's Online Grant Application webpage (OLGA):

<https://olga.drpt.virginia.gov/news.aspx>

Applications should be submitted via hard copy to:

Director

Virginia Department of Rail and Public Transportation

600 East Main Street, Suite 2102

Richmond, Virginia 23219

Eligible Recipients

The following organizations are eligible to apply for Industrial Access Railroad Track funding:

1. Business, Commercial, or Industrial Enterprises
2. Municipal and County Governments acting on behalf of a Business, Commercial or Industrial enterprises
3. Local Departments of Economic Development acting on behalf of Enterprises
4. Railroads

All applications for industrial access railroad track funds shall be discussed with the appropriate local government. Each application shall be accompanied by a resolution from the local governing body requesting that such funds be allocated to the proposed project from the Industrial Access Railroad Track Program. The Industrial Access Railroad Track Program is coordinated with the Economic Development Partnership or the Office of Business Assistance. This coordination effort is reflected in the project selection criteria point system.

Eligible Costs

Eligible project cost includes the following:

1. Engineering
2. Site Preparation (including grading and drainage)
3. Track Construction
4. Track Rehabilitation
5. Track Improvement
6. Environmental Mitigation

Funds may be used to construct, reconstruct, or improve part or all of the necessary tracks and related facilities on public or private property currently used or being developed, existing or prospective, for single industries or industrial subdivisions under firm contract or already constructed, including those subdivisions owned or promoted by railroad companies and others.

Ineligible Costs

Ineligible project costs include the following:

1. Relocation of Utilities
2. Switches and track to the clear point connecting to the main line
3. Acquisition of Right-of-Way
4. Operation and Maintenance
5. Rail less than 115 pounds per yard (detailed explanation by applicant and approval by DRPT is required prior to rail purchase of less than 115 pounds)
6. Work begun prior to CTB allocation and a Notice to Proceed from DRPT, unless the Grantee was issued a Letter of No Prejudice

If the total project costs exceed the available funds for a specific project, the expenditures will be approved in the following priority order: 1) track materials, 2) installation, 3) engineering, 4) drainage, 5) grading, 6) environmental mitigation. Eligible items of construction shall be limited to those items necessary to provide adequate and safe rail service between the clear point and the industry being served.

Allocation of Funds

The amount of industrial access railroad track funds allocated to a project shall be limited to 15 percent of the capital outlay of the designated business, with no more than \$450,000 in matched and unmatched funds allocated to any one county, city, or town. The 15 percent limitation and the maximums on matched or unmatched funding may be waived at the discretion of the CTB.

No more than \$300,000 of unmatched funds may be allocated to any project in any fiscal year. Any funds in excess of \$300,000 shall be matched dollar-for-dollar by the recipient or from other non-program sources.

Industrial Access Railroad Funding Limits

Total Project Capital Costs	Maximum Grant Funds Unmatched	Maximum Additional Grant Funds with Match	Total Grant Funds Available for a Project
\$ 1,000,000	\$ 150,000	-	\$ 150,000
\$ 2,000,000	\$ 300,000	-	\$ 300,000
\$3,000,000+	\$ 300,000	\$ 150,000	\$ 450,000

The CTB may consider a supplementary allocation to any project, provided such supplementary allocation does not exceed the established funding limitation for the project. The Director has the authority to increase the allocation to any project by 10 percent due to unanticipated problems provided such increases do not exceed the funding limitation for the project.

In the evaluation of projects, the CTB considers the cost of construction of an access track in relation to the prospective volume of rail traffic, capital investment, potential employment, and other economic and public benefits.

Expending Committed Funds

Committed industrial access railroad track funds are those funds allocated to a project but not necessarily spent in the year of allocation. Committed funds shall be expended within 24 months of the date of CTB allocation.

Grantees can request a time extension in writing to DRPT, which will be subject to approval by the Director.

Annual Carload Performance

The agreement for grant funding shall include performance criteria in order to preserve the public benefit gained through investment of public dollars. Performance shall be reported annually on a fiscal year schedule for the time period beginning July 1 after payment of the final invoice which constitutes project acceptance by DRPT. The Grantee shall submit performance criteria on Annual Carloads per the terms of the agreement.

Annual Carload performance counts the carloads run over the track improvements funded through the Rail Industrial Access Grant program. The Grantee must report Annual Carloads which exceed the threshold set in the agreement within the three-year performance period.

If Annual Carload performance did not meet or exceed the thresholds set in the agreement, an additional three-year performance period in writing may be granted by the Director after review of reported carloads in relation to the rail vs. truck ratio forecasted at the time of application.

Failure to satisfy performance requirements shall result in reimbursement of grant funds to the Department. Repayment shall be based on the percentage of the performance target achieved. The percentage for partial repayment of the grant amount shall be determined by the difference between the highest Annual Carload performance reported and the minimum threshold necessary to achieve 50 application points.

Commonwealth's Contingent Interest Ownership

The Grantee shall be contractually committed to providing the Commonwealth with a contingent interest in that portion of trackage and facilities constructed or improved with the use of Industrial Access Railroad Track funds. Retained interest of the Commonwealth in grant funded rail access shall be 15 years, coinciding with the start of the performance period.

As part of retaining the Commonwealth's contingent interest, the access railroad track shall be made available for use by all common carriers using the railway system to which they connect. A certification issued by the landowner or using business must state that they will provide for the continuous maintenance and assume the liability of the tracks and facilities.

Guarantees as to the right of way and adjustment of utilities, to include their source of donation or funding, shall be given by the landowner or using business.

Any cost involved in any subsequent relocation or removal of industrial access railroad track facilities shall be borne by the landowner, using business or developer. Following relocation, the Commonwealth's interest will be redefined. In case of removal, the Commonwealth will be reimbursed the value of its interest in the facilities.

Purchasing or Selling Industrial Access Tracks

The Commonwealth may, at its option, allow the industry, using business, or developer, to purchase the Commonwealth's interest in an industrial access railroad track facility at a value determined by the Director. In the event the landowner, using business, or developer desires to sell their property or interest in property on which access tracks have been constructed under this program, said sale will be subject to the Commonwealth's contingent interest and written approval.

Industry Certifications and Repayment

The Grantee will be required to repay DRPT its contribution to the cost of the construction and materials, less depreciation, if the project tracks are abandoned, relocated or sold (without a grant assignment).

The Grantee shall certify that it will provide the the rail traffic (Annual Carloads) indicated in the project application. Annual Carloads will be defined in the Agreement.

The Grantee will be required to repay DRPT its contribution to the cost of the access track if:

1. Annual Carloads for the performance period does not meet or exceed the thresholds set in the Agreement which qualified the Grantee for funding.
2. The rail constructed with grant funding is no longer used for its intended purpose. The repayment for years four – 15 of DRPT's contingent interest

will be a pro-rated amount is determined per the terms of the grant funding agreement.

Account Records, Reports

The Grantee shall establish and maintain separate accounts for the project. The Grantee and its subcontractors shall retain all records pertaining to this project for three years from the date of the final payment from the DRPT.

Payment

The Grantee shall submit copies of the paid invoices together as ONE reimbursement request as soon after project completion as possible. Included with the invoice will be a certification of the overall capital investment by the Grantee (Attachment D in the Agreement). The request for payment must be within the 24-month contract period for expending funds (beginning from the date of the CTB's approval of the Project). The Director may extend the contract period due to extenuating circumstances upon receipt of a written request.

Once DRPT has received notice that the project is complete it shall perform a field review of the Work before final audit and payment. The field review and inspection shall be done as quickly as time permits, but no later than 60 days from receiving the notice that the project has been completed.

Only work specified in an executed grant funding agreement between DRPT and the Grantee is eligible for reimbursement. Work begun prior to a Notice to Proceed from DRPT will not be approved for reimbursement unless DRPT issued a Letter of No Prejudice which covered the Work at issue.

Project Selection and Implementation

DRPT will assemble all necessary data and documents and review the proposals. Using the procedures outlined, DRPT will develop recommendations. These recommendations will be provided to the Director who will present recommendations to the CTB. The CTB will establish priorities and allocate funds for selected projects.

Following the decision of the CTB on project funding, the applicants will be notified in writing. Successful applicants will enter into the contractual commitments required under Item 5 of the Industrial Access Railroad Track Policy pertaining to responsibility for maintenance, liability, relocation, and removal.

For projects involving the reconstruction or improvement of existing tracks or facilities, only those materials installed with the use of Industrial Access Railroad Track funds shall become subject to the contingent interest requirements of the Commonwealth. Ownership of materials and facilities in place prior to project implementation shall remain with the original owner.

Appendix A

Project Selection Criteria Point System

Project Selection Criteria Point System

Under 50 will not be recommended to the CTB

1. Total Number of Carloads (Annually)

501 or greater	20 points
401 to 500	17 points
301 to 400	14 points
201 to 300	11 points
101 to 200	8 points
100 or less	5 points

2. Added Employment

101 or greater	20 points
76 to 100	17 points
51 to 75	14 points
26 to 50	11 points
25 or less	8 points

3. Commonwealth's Portion of Track Construction per Initial Capital Investment Cost

0.03 or less	10 points
0.04 to 0.06	8 points
0.07 to 0.10	6 points
0.11 to 0.14	4 points
0.15	2 points

4. Jurisdictional Unemployment Rate (Statewide Unemployment Rate [R])

(R + 2.5) or greater	20 points
(R + 2.0) to (R + 2.4)	17 points
(R + 1.5) to (R + 1.9)	14 points
(R + 1.0) to (R + 1.4)	11 points
(R + .9) or less	8 points

5. Project included by Virginia
Economic Development Partnership
or the Virginia Department of Business
Assistance as part of initiatives to bring or
expand industry in Virginia

	10 points
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- | | | |
|----|---|-----------|
| 6. | Non-State Contributions to Track Construction | |
| | 41% or greater | 10 points |
| | 31% to 40% | 8 points |
| | 21% to 30% | 6 points |
| | 11% to 20% | 4 points |
| | 10% or less | 2 points |
| 7. | Contributes to the long term viability of a Shortline | 10 points |

Unscored Application Requirement:

Estimate of the percentage of Railcars (vs. Truckloads) as the overall mode of transportation for inbound and outbound traffic.

Notes: Any applicant receiving less than 50 points will not receive a favorable recommendation from the staff unless there are extenuating circumstances.

Use unemployment data for the latest available period.

Appendix B

RIA Procurement Guidelines

Rail Industrial Access Procurement Guidelines

1. The Grantee is encouraged to obtain quotes from Small, Women, and Minority (SWAM) vendors if available for services under this contract. However, the Grantee is not required to use a SWAM vendor. The Virginia Department of Minority Business Enterprise has a list of SWAM companies through their website vendor search located at <http://www.dmbv.virginia.gov/cgi-bin/search.cgi#default>. A quick search can be made from the database on this website using the keyword “Railroad” entered into the NIGP description field under the NIGP Code/Description tab. Of note, DRPT does not maintain this database and has no control over companies listed in the system or displayed by the search. The search engine produces more services than track construction including material suppliers and engineering consultants.

2. The goal of the agency is to encourage competition. In the case of RIA projects, the Grantee should use competitive sealed bidding. Negotiation is not part of this type of bidding. The reason negotiation is not permitted is that detailed engineering plans as well as specifications have been developed clearly defining the construction scope. Therefore, all of the contractors are bidding from the same set of plans and specifications.

The competitive sealed bidding process is standard on all Virginia Rail Industrial Access projects and will not be waived because public funds are involved. The Grantee should solicit six bidders with at least four of those being SWAM businesses. If six bidders or three SWAM businesses are not available, then the Grantee should document that they attempted to satisfy the procurement requirements.

The Grantee shall submit the bid package to DRPT for approval prior to bidding. After DRPT approval of the bid package, the Grantee shall advertise the project in a newspaper of general circulation for at least one day. The bidding period must remain open for at least 10 days to provide enough time for the bidders. No contractor shall be excluded from bidding. Further review of site conditions is allowable provided all contractors are provided with the same opportunities and information.

3. Once bids have been received the Grantee shall perform a public bid opening stating the company name, total price, and apparent low bidder. There should be a process in place so if there is a significant error in the low bid, the contractor is allowed to withdraw the bid. Receiving the bids via a secured company website including passwords and posting the results on the Grantee’s website is considered a permissible alternative.

The Grantee shall submit a bid summary and supporting bidding documents from each contractor to DRPT for approval prior to awarding the contract to the lowest responsive and responsible bidder. DRPT reviews the bids and keeps them on file with the grant Agreement.

The Grantee must award the project to the lowest responsive and responsible bidder, as stated in Va. Code Ann. § 2.2-4302.1(5). If the Grantee desires to award the contract to multiple bidders using individual divisions of labor, the bid documents must clearly identify these divisions and the Grantee’s intent to potentially select multiple bidders.

4. DRPT encourages Grantees and contractors to use iron, steel, and manufactured goods used in the project are produced in the United States. All material purchases for this project will be

subject to the appropriate sales tax as these expenses are not considered exempt. In addition, prevailing wages and benefits identified under the Davis-Bacon Act are not required for RIA projects.

5. The Grantee may perform or contract for construction administration and construction management services. However, the combined amount of all these incidental services including but not limited to management and administration shall not exceed five percent of the total project budget.

6. The RIA program is based on a single final invoice reimbursement. The Grantee will pay for the work performed by the contractors up front. DRPT does not allow progress billing under this program and will only review a final invoice at the end of the rail construction project. In addition, the Grantee will need to have completed a certain level of capital expenditures to the facility site prior to submitting the final invoice. The specific amount of capital expenditures required can be provided to the Grantee by the DRPT Project Manager.

Example: to be eligible for reimbursement of \$300,000, the Grantee must have capital expenditures equal to or greater than \$2,000,000. DRPT will then review the final invoice package, perform a field inspection, and recommend payment of eligible project costs within 60 days.

7. It is important to note that some costs relating to the track construction may not be considered eligible. Non-eligible expenses under the RIA program include the following:

- utility relocation,
- right-of-way acquisition,
- purchase/installation of serving railroad switch (switch on locality owned track is eligible),
- operations/maintenance, and
- purchase/installation of rail less than 115 pounds/yard (unless previously approved by DRPT).

Note: All steel rail shall be either new or meet AREMA Class 1 specifications for relay rail.